

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

| | | |
|---------------------|---|--------------------------------|
| PLUM ISLAND SOAP |) | |
| COMPANY, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 1:18-cv-10214 |
| |) | |
| |) | JURY TRIAL DEMANDED |
| 1818 FARMS, LLC and |) | ORAL ARGUMENT REQUESTED |
| NATALSHA MCCRARY, |) | MOTION IS OPPOSED |
| |) | |
| Defendant. |) | |

**DEFENDANTS' MOTION TO DISMISS, OR IN THE
ALTERNATIVE, TO TRANSFER OR TO STAY PROCEEDINGS**

COME NOW Defendants 1818 Farms, LLC (“1818 Farms”) and Natasha McCrary (“McCrary,” with 1818 Farms, “Defendants”), and pursuant to the first-to-file rule and Rules 12(b)(2), 12(b)(6) and 13(a) of the Federal Rules of Civil Procedure, move this Court to dismiss the Complaint (Doc. 1) filed by Plaintiff Plum Island Soap Company, LLC (“PISC” or “Plaintiff”) in this action alleging trademark infringement, trade dress infringement and false designation of origin. 1818 Farms instituted an action involving the same parties and facts, *1818 Farms LLC v. Plum Island Soap Company, LLC*, Case 5:18-cv-00135-HNJ (the “Alabama action”) before Plaintiff filed its Complaint in this action. In addition, Plaintiff’s claims in its Complaint are compulsory counterclaims in that action and should be dismissed. Further, Defendants are not subject to personal jurisdiction, and thus

should be dismissed from this action. Moreover, each and every claim against McCrary set forth in Plaintiff's Complaint should be dismissed for failure to state a claim for which relief can be granted. Alternatively, Defendants request that the Court transfer this action under the first-to-file rule to the United States District Court for the Northern District of Alabama, where the prior-filed Alabama action is pending, or stay this case pending resolution of the Alabama action. PISC does not consent to this motion.

In support of their motion, Defendants rely on their Memorandum of Points and Authorities and the Declarations of Natasha McCrary and Jon Holland, as well as 1818 Farms' complaint filed in the first-filed Alabama action.

WHEREFORE, PREMISES CONSIDERED, Defendants 1818 Farms, LLC and Natasha McCrary respectfully request that the Court grant this motion and enter an Order dismissing the Complaint of Plaintiff Plum Island Soap Company, LLC. Alternatively, Defendants respectfully requests that the Court enter an Order transferring this action to the Northern District of Alabama, where the first-filed Alabama action is pending, or staying this case pending determination of proper venue in the Alabama action.

DATED: March 22, 2018

Respectfully submitted,

/s/ Harvey J. Wolkoff

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L.R. 7.1(a)(2) COUNSEL CERTIFICATION

The undersigned hereby certifies that counsel for Defendants 1818 Farms, LLC and Natasha McCrary has conferred with counsel for Plaintiff Plum Island Soap Company in a good faith attempt to resolve or narrow the issues addressed in this motion, but has been unable to do so.

DATED: March 22, 2018

/s/ Harvey J. Wolkoff

Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the NEF (NEF) and set forth below, and paper copies will be sent to those indicated as non-registered participants, if any, on March 22, 2018.

/s/ Harvey J. Wolkoff

Attorney for Defendants